

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,  
ADVISORY OPINIONS AND ORDERS

INTERPRETATION OF THE AGREEMENT  
OF 25 MARCH 1951 BETWEEN  
THE WHO AND EGYPT

ADVISORY OPINION OF 20 DECEMBER 1980

**1980**

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,  
AVIS CONSULTATIFS ET ORDONNANCES

INTERPRÉTATION DE L'ACCORD  
DU 25 MARS 1951  
ENTRE L'OMS ET L'ÉGYPTE

AVIS CONSULTATIF DU 20 DÉCEMBRE 1980

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AVIS CONSULTATIF

## INTERNATIONAL COURT OF JUSTICE

YEAR 1980

20 December 1980

INTERPRETATION OF THE AGREEMENT  
OF 25 MARCH 1951 BETWEEN  
THE WHO AND EGYPT

*Determination by the Court of the meaning and implications of question submitted for advisory opinion – Need for Court to ascertain and formulate legal questions really in issue.*

*International organizations and host States – Respective powers of the organization and the host State with regard to seat of headquarters or regional offices of organization – Mutual obligations of co-operation and good faith resulting from a State's membership of organization as well as from relations between organization and host State – Legal principles and rules applicable on transfer of office of organization from territory of host State concerning conditions and modalities for effecting transfer – Duty to consult – Consideration of provisions of host agreements and of Vienna Convention on the Law of Treaties – Application of principles and rules of general international law – Mutual obligation to co-operate in good faith to promote the objectives and purposes of the Organization.*

## ADVISORY OPINION

*Present : President Sir Humphrey WALDOCK ; Vice-President ELIAS ; Judges FORSTER, GROS, LACHS, MOROZOV, NAGENDRA SINGH, RUDA, MOSLER, ODA, AGO, EL-ERIAN, SETTE-CAMARA ; Registrar TORRES BERNÁRDEZ.*

Concerning the interpretation of the Agreement signed on 25 March 1951 between the World Health Organization and the Government of Egypt,

THE COURT,

composed as above,

*gives the following Advisory Opinion :*

1. The questions upon which the advisory opinion of the Court has been requested were laid before the Court by a letter dated 21 May 1980, received in the Registry on 28 May 1980, addressed by the Director-General of the World

Health Organization to the Registrar. In that letter the Director-General informed the Court of resolution WHA33.16 adopted by the World Health Assembly on 20 May 1980, in accordance with Article 96, paragraph 2, of the Charter of the United Nations, Article 76 of the Constitution of the World Health Organization, and Article X, paragraph 2, of the Agreement between the United Nations and the World Health Organization, by which the Organization had decided to submit two questions to the Court for advisory opinion. The text of that resolution is as follows :

“The Thirty-third World Health Assembly,

Having regard to proposals which have been made to remove from Alexandria the Regional Office for the Eastern Mediterranean Region of the World Health Organization,

Taking note of the differing views which have been expressed in the World Health Assembly on the question of whether the World Health Organization may transfer the Regional Office without regard to the provisions of Section 37 of the Agreement between the World Health Organization and Egypt of 25 March 1951,

Noting further that the Working Group of the Executive Board has been unable to make a judgment or a recommendation on the applicability of Section 37 of this Agreement,

*Decides*, prior to taking any decision on removal of the Regional Office, and pursuant to Article 76 of the Constitution of the World Health Organization and Article X of the Agreement between the United Nations and the World Health Organization approved by the General Assembly of the United Nations on 15 November 1947, to submit to the International Court of Justice for its Advisory Opinion the following questions :

‘1. Are the negotiation and notice provisions of Section 37 of the Agreement of 25 March 1951 between the World Health Organization and Egypt applicable in the event that either party to the Agreement wishes to have the Regional Office transferred from the territory of Egypt?’

2. If so, what would be the legal responsibilities of both the World Health Organization and Egypt, with regard to the Regional Office in Alexandria, during the two-year period between notice and termination of the Agreement?’ ”

2. By letters dated 6 June 1980, the Registrar, pursuant to Article 66, paragraph 1, of the Statute of the Court, gave notice of the request for advisory opinion to all States entitled to appear before the Court.

3. The President of the Court, having decided pursuant to Article 66, paragraph 2, of the Statute, that those States Members of the World Health Organization who were also States entitled to appear before the Court, and the Organization itself, were likely to be able to furnish information on the question submitted to the Court, made an Order on 6 June 1980 fixing 1 September 1980 as the time-limit within which written statements might be submitted by those States. Accordingly, the special and direct communication provided for in

Article 66, paragraph 2, of the Statute was included in the above-mentioned letters of 6 June 1980 addressed to those States, and a similar communication was addressed to the WHO.

4. The following States submitted written statements to the Court within the time-limit fixed by the Order of 6 June 1980 ; Bolivia, Egypt, Iraq, Jordan, Kuwait, Syrian Arab Republic, United Arab Emirates, United States of America. The texts of these statements were transmitted to the States to which the special and direct communication had been sent, and to the WHO.

5. Pursuant to Article 65, paragraph 2, of the Statute and Article 104 of the Rules of Court, the Director-General of the WHO transmitted to the Court a dossier of documents likely to throw light upon the questions. This dossier was received in the Registry on 11 June 1980 ; it was not accompanied by a written statement, a synopsis of the case or an index of the documents. In response to requests by the President of the Court, the WHO supplied the Court, for its information, with a number of additional documents, and the International Labour Organisation supplied the Court with documents of that Organisation regarded as likely to throw light on the questions before the Court.

6. By a letter of 15 September 1980, the Registrar requested the States Members of the WHO entitled to appear before the Court to inform him whether they intended to submit an oral statement at the public sittings to be held for that purpose, the date fixed for which was notified to them at the same time.

7. Pursuant to Article 106 of the Rules of Court, the Court decided to make the written statements submitted to the Court accessible to the public, with effect from the opening of the oral proceedings.

8. In the course of three public sittings held on 21, 22 and 23 October 1980, oral statements were addressed to the Court by the following representatives :

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| For the <i>United Arab Emirates</i> :     | Mr. Mustafa Kamil Yasseen, Special Counsellor of the Mission of the United Arab Emirates at Geneva. |
| For the <i>Republic of Tunisia</i> :      | Mr. Abdelhawab Chérif, Counsellor, Embassy of Tunisia at The Hague.                                 |
| For the <i>United States of America</i> : | Mr. Stephen M. Schwebel, Deputy Legal Adviser, Department of State.                                 |
| For the <i>Syrian Arab Republic</i> :     | Mr. Adnan Nachabé, Legal Adviser to the Ministry of Foreign Affairs.                                |
| For the <i>Arab Republic of Egypt</i> :   | H.E. Mr. Ahmed Osman, Ambassador of Egypt to Austria.   |

In reply to a question by the President, Mr. Claude-Henri Vignes, Director of the Legal Division of the WHO, stated at the public sitting that the WHO did not intend to submit argument to the Court on the questions put in the request for Opinion, but that he would be prepared, on behalf of the Director-General, to answer any question that the Court might put to him. Questions were put by Members of the Court to the Government of Egypt and to the WHO ; replies were given by the representative of Egypt and by the Director of the Legal Division of the WHO, and additional observations were made by the representatives of the United States of America and the United Arab Emirates.

9. At the close of the public sitting held on 23 October 1980, the President of the Court indicated that the Court remained ready to receive any further observations which the Director of the Legal Division of the WHO or the representatives of the States concerned might wish to submit in writing within a stated time-limit. In pursuance of this invitation, the Governments of the United States of America and Egypt transmitted certain written observations to the Court on 24 October and 29 October 1980 respectively ; copies of these were supplied to the representatives of the other States which had taken part in the oral proceedings, as well as to the WHO. Certain further documents were also supplied to the Court by the WHO after the close of the oral proceedings, in response to a request made by a Member of the Court.

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10. The first, and principal, question submitted to the Court in the request is formulated in hypothetical terms :

“1. Are the negotiation and notice provisions of Section 37 of the Agreement of 25 March 1951 between the World Health Organization and Egypt applicable in the event that either party to the Agreement wishes to have the Regional Office transferred from the territory of Egypt ?”

But a rule of international law, whether customary or conventional, does not operate in a vacuum ; it operates in relation to facts and in the context of a wider framework of legal rules of which it forms only a part. Accordingly, if a question put in the hypothetical way in which it is posed in the request is to receive a pertinent and effectual reply, the Court must first ascertain the meaning and full implications of the question in the light of the actual framework of fact and law in which it falls for consideration. Otherwise its reply to the question may be incomplete and, in consequence, ineffectual and even misleading as to the pertinent legal rules actually governing the matter under consideration by the requesting Organization. The Court will therefore begin by setting out the pertinent elements of fact and of law which, in its view, constitute the context in which the meaning and implications of the first question posed in the request have to be ascertained.

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11. The existence at the present day of a Regional Office of the World Health Organization located at Alexandria has its origin in two main circumstances. One is the policy adopted by the WHO in 1946, which is expressed in Chapter XI of the text of its Constitution, of establishing regional health organizations designed to be an *integral part of the Organization*. The other is the fact that at the end of the Second World War there existed at Alexandria a health Bureau which, pursuant to that policy

and by agreement between Egypt and the WHO, was subsequently incorporated in the Organization in the manner hereafter described.

12. Article 44 of the WHO Constitution empowers the World Health Assembly to define geographical areas in which it is desirable to establish a regional organization and, with the consent of a majority of the members of the Organization situated within the area, to establish the regional organization. It also provides that there is not to be more than one regional organization in each area. Articles 45 and 46 proceed to lay down that each such regional organization is to be an integral part of the Organization and to consist of a regional committee and a regional office. Articles 47-53 then set out rules to regulate the composition, functions, procedure and staff of regional committees. Finally, Article 54, which contains special provisions regarding the "integration" of pre-existing inter-governmental regional health organizations, reads as follows :

"The Pan American Sanitary Organization represented by the Pan American Sanitary Bureau and the Pan American Sanitary Conferences, and all other inter-governmental regional health organizations in existence prior to the date of signature of this Constitution, shall in due course be integrated with the Organization. This integration shall be effected as soon as practicable through common action based on mutual consent of the competent authorities expressed through the organizations concerned."

The above-mentioned provisions of Chapter XI are thus the constitutional framework within which the WHO came to establish its regional office in Egypt.

13. The existence of a health bureau in Alexandria dates back to the creation of a general Board of Health in Egypt in 1831 for the purpose of preventing the spread of cholera and other diseases by and among pilgrims on the way to and from Mecca. This Board subsequently acquired a certain international character as a result of the association with its quarantine work of seven representatives of States having rights in Egypt under the capitulations régime ; and in 1892 its character as an international health agency became more pronounced as a result of changes in the structure of its council effected by the International Sanitary Convention of Venice of that year. In this form the *Conseil sanitaire maritime et quarantenaire d'Egypte* operated successfully for over forty years, during which, by arrangement with the *Office international d'hygiène publique* and pursuant to the International Sanitary Convention of 1926, it also functioned as the Regional Bureau of Epidemiological Intelligence for the Near East. In 1938, at the request of the Egyptian Government, it was decided, at the International Sanitary Conference of that year that the *Conseil sanitaire* should be abolished and its functions assumed by the governments of Egypt and the other countries concerned, but this did not involve the suppression of the Regional Bureau of Epidemiological Intelligence. The new Bureau, although placed under the authority of the Egyptian Gov-

ernment, was to have the same international character as the former Bureau ; the Egyptian Government was to set up a commission including technical representatives of the affiliated countries. From 1938 onwards the expenses of the Bureau were wholly borne by the Egyptian Government. The Second World War broke out before the projected commission had been constituted, and from December 1940 until the end of hostilities the work of the Alexandria Bureau was taken over by a special wartime service under the Quarantine Department of the Egyptian Ministry of Public Health. After the hostilities had ended, the Bureau resumed its operations.

14. It has not been made entirely clear to the Court what was the exact situation in regard to the Alexandria Sanitary Bureau as a result of the events just described. But it was operating under Egypt's Ministry of Public Health when in 1946, and before the WHO Constitution had been adopted, Egypt raised the question of the relation of the Bureau to the Organization. Even before that, the members of the newly created League of Arab States had taken a decision in favour of using the Alexandria Bureau as their regional sanitary bureau. Meanwhile, however, the Alexandria Bureau was continuing to operate under the Egyptian sanitary authorities rather than as an inter-governmental institution. On the other hand, the projected association of the Bureau with the League of Arab States, the international character of its functions and its previous status may have led to the Bureau being regarded as an inter-governmental institution. This no doubt explains why, as will now be seen, the Alexandria Sanitary Bureau, despite any question there may have been as to its inter-governmental character, was in fact dealt with by the Organization as a case of integration under Article 54 of the WHO Constitution.

15. On 6 March 1947, at the direction of the WHO Interim Commission, the Executive Secretary of the Commission sent a circular letter to member governments enquiring as to whether they might wish to have either the headquarters of the organization or the seat of a regional office located on their territory and as to the facilities they could offer. Soon afterwards he was also directed to get in touch with the authorities "of the Pan Arab Sanitary Organization", and wrote on 2 May 1947 for information to the Egyptian Minister of Public Health. Replying on 26 July 1947, the Egyptian Minister supplied him with a memorandum giving an account of the history and activities of the "Pan Arab Regional Health Bureau" from 1926 onwards. When, on the basis of the memorandum, a recommendation was made by the Committee on Relations to the Interim Commission in September 1947 that negotiations should be started with the "Pan Arab Sanitary Organization", objection was taken that the Pan Arab Sanitary Bureau did not really exist. Some delegates observed that the negotiations should rather be with the Egyptian Government and, ultimately, it was with the Egyptian Government that the negotiations concerning the Bureau took place. In fact, the next development was a reply from the Egyptian Government to the Executive Secretary's circular

letter in which the Government stated that the competent authorities had declared that they were most anxious to see a regional bureau established at Alexandria, which could deal with all questions coming within the scope of the WHO for the entire Middle East.

16. Matters then began to move more quickly. It appears from a report submitted to the Interim Commission in May 1948, mentioned below, that early in January 1948 quarantine experts of the Arab countries met in Alexandria and passed a number of resolutions in favour of establishing a regional organization. This was to be composed of the member States of the League of Arab States and, it was contemplated, certain other States in the region ; it was to have a regional committee similarly composed ; and it was to use the Alexandria Bureau as its regional office. These resolutions were adopted in the light of the fact that the WHO was to take over the functions of pre-existing regional health organizations. The next step was an invitation from the Egyptian Ministry of Public Health to Dr. Stampar, Chairman of the Interim Commission, to visit Egypt and study on the spot the conditions for setting up the proposed regional organization. In May 1948 a substantial report, referred to above, was duly submitted by the Chairman of the Interim Commission in which he gave a detailed account of the past history and current activities of the Alexandria Bureau and set out the arguments in favour of it as the regional health centre for the Near and Middle East. He ended the report with the conclusion :

“we are bound to admit that the conditions which predestinate Alexandria to be the centre of the future regional health organization for the Near and the Middle East are literally unique”.

The Constitution of the WHO had now come into force and the question of the Alexandria Bureau was discussed in the Committee on Headquarters and Regional Organization at the first session of the new World Health Assembly. Mention was made of the facts that most of the member States of the Eastern Mediterranean area had agreed to the proposal for the establishment of a regional organization in that area, that the Alexandria Bureau was a pre-existing sanitary bureau, and that preliminary steps had already been taken for the final integration of this bureau with the WHO. Taking those facts into account the Committee recommended that the Executive Board should be instructed to integrate the Bureau with the WHO as soon as practicable, through common action, “in accordance with Article 54 of the WHO Constitution”, and this recommendation was approved by the World Health Assembly on 10 July 1948 (resolution WHA1.72).

17. The Director-General of the WHO then proceeded to organize the setting up of a Regional Committee for the Eastern Mediterranean and an agenda was drawn up for its inaugural meeting due to take place on 7 February 1949. Earlier, the Executive Secretary of the Interim Commission had negotiated successfully with the Swiss Government the text of an

agreement for the WHO's headquarters in Geneva which had been approved by the First World Health Assembly on 17 July 1948 and by Switzerland on 21 August 1948 ; and a model host agreement had been prepared in the WHO for use in negotiations concerning the seats of regional or local WHO offices. Accordingly, when the agenda was drawn up for the Regional Committee's inaugural meeting on 7 February 1949, included in it was the question of a "Draft Agreement with the Host Government of the Regional Office".

18. At the Regional Committee's meeting the Egyptian Delegation informed the Committee on 7 February 1949 that the Egyptian Council of Ministers had just

"agreed, subject to approval of the Parliament, to lease to the World Health Organization, for the use of the Regional Office for the Eastern Mediterranean area, the site of land and the building thereon which are at present occupied by the Quarantine Administration and the Alexandria Health Bureau, for a period of nine years at a nominal annual rent of P.T.10".

The Committee next took up the question of the location of the Regional Office for the Eastern Mediterranean area. A motion was introduced, which the Committee at once approved, "to recommend to the Director-General and the Executive Board, subject to consultation with the United Nations, the selection of Alexandria as the site of the Regional Office". The recitals in the formal resolution to that effect, adopted the following day referred, *inter alia*, to "the desirability of the excellent site and buildings under favourable conditions generously offered by the Government of Egypt".

19. The Regional Committee also addressed itself to the question of the integration of the Alexandria Sanitary Bureau with the WHO. After recalling that a Committee of the Arab States had previously voted in favour of the integration, the Egyptian delegate observed that, should this happen, "the WHO would have to take over expenses from the date of opening of the Regional Office". A few brief explanations having been given, the Committee adopted a resolution recommending the integration of the Bureau in the following terms :

"Resolves to recommend to the Executive Board that in establishing the Regional Organization and the Regional Office for the Eastern Mediterranean the functions of the Alexandria Sanitary Bureau be integrated within those of the Regional Organization of the World Health Organization."

The Egyptian delegate responded by presenting a written statement to the Committee to the effect that, taking into account the resolution just adopted, his Government was pleased to transfer to the World Health Organization the functions and all related files and records of the Alexandria Sanitary Bureau. The statement went on to say that this transfer

would be made on the date on which the Organization notified the Government of Egypt of the commencement of operations in the Regional Office for the Eastern Mediterranean Region. That statement having met with warm thanks from the Committee, the Egyptian delegate proposed that the work of the Regional Office should begin in July 1949 and this proposal was adopted.

20. The Director-General now raised the question of the "Draft Agreement with the Host Government" which he had included in the Agenda. He said he wished to inform the Committee that "such a draft agreement had been produced and handed to the Egyptian Government where it was under study in the legal department". He also stated that the WHO, "though always considering necessary formalities, never allowed them to interfere with Health Work", and the Egyptian delegate then added the comment that, should there be any difference of opinion between the WHO and the legal expert, this could be settled by negotiation.

21. The question passed to the Executive Board of the WHO which, in March 1949, adopted resolution EB3.R30 "conditionally" approving selection of Alexandria as the site of the Regional Office, "subject to consultation with the United Nations". That resolution went on to request the Director-General to thank Egypt for "its generous action" in placing the site and buildings at Alexandria at the disposal of the Organization for nine years at a nominal rent. Next, it formally approved the establishment of the Regional Office for the Eastern Mediterranean and the commencement of its operations on or about 1 July 1949. The resolution then endorsed the Regional Committee's recommendation that the "functions" of the Alexandria Sanitary Bureau be "integrated" within those of the Regional Organization. It further authorized the Director-General to express appreciation to the Egyptian Government for the transfer of the "functions, files and records of the Alexandria Sanitary Bureau to the Organization upon commencement of operations in the Regional Office". The resolution did not deal with the projected host agreement still under negotiation with the Egyptian Government. Pursuant to the Agreement between the WHO and the United Nations which came into force on 10 July 1948 (Article XI), the consultation with the United Nations referred to in the resolution was effected in May 1949. This confirmed the selection of Alexandria as the site of the Regional Office.

22. However the draft host agreement, which necessarily had implications not only for the Ministry of Public Health but for other departments of the Egyptian administration, it would seem, had been undergoing close examination. As appears from a letter of 4 May 1949 from the Ministry of Foreign Affairs to Sir Ali Tewfik Shousha Pasha, then Under-Secretary of State for Public Health but already designated as the first WHO Regional Director for the Eastern Mediterranean, he had been discussing the draft agreement with the Foreign Ministry during April. In that letter the Foreign Ministry referred to the draft agreement as one

“which the World Health Organization intends to conclude with the Egyptian Government on the privileges and immunities to be enjoyed by its regional office which will be established in Alexandria as well as the staff of that office”.

It explained that it was enclosing a copy of the memorandum prepared by the Contentieux (legal department) of the Ministries of Foreign Affairs and Justice, setting out their comments on the draft agreement, together with a revised draft. The memorandum stated that, in studying the provisions of the draft, the Contentieux had also had regard to various other agreements concluded, or in course of conclusion, between individual States and specialized agencies on the occasion of the latter establishing headquarters or regional offices in their territories. In this connection, it made mention of the headquarters agreements already concluded by France with the United Nations Educational, Scientific and Cultural Organization, and by Switzerland with WHO itself, as well as draft agreements still under negotiation by France and Peru with the International Civil Aviation Organization regarding the seats of regional offices to be established in their territories. The memorandum went on to suggest numerous changes in the provisions of the agreement and gave detailed explanations of the amendments which the Contentieux wished to see in the draft. The memorandum and revised draft, it appears from a later note of Sir Ali Tewfik Shousha Pasha, were then transmitted to the Director-General of the WHO. It also appears from letters of 29 May and 4 June 1949 supplied to the Court by the WHO that some further exchanges took place between him and the Contentieux concerning the draft agreement at this time.

23. Meanwhile, however, the whole question of privileges and immunities for regional offices of international organizations had become at once more complicated and more pressing for the Egyptian administration. This was because by now Regional Bureaux for the Middle East had already been established in Cairo by the Food and Agriculture Organization of the United Nations, by ICAO and by Unesco, and because in any event it was becoming necessary to consider the question of Egypt's adherence to the Convention on the Privileges and Immunities of the Specialized Agencies. The general situation was laid before Egypt's Council of Ministers by the Foreign Minister in a Note of 25 May 1949. His Note ended with a proposal that, as a provisional measure the Council should grant to the staff of FAO, Unesco and WHO in their Regional Offices the same temporary exemption from customs dues on any articles and equipment imported from abroad and relating to their official work as was already enjoyed by ICAO. This proposal was endorsed by the Council of Ministers at a meeting four days later, and the Regional Director was so informed on 23 June. The operations of the Regional Office being due to commence on 1 July, the need to complete the negotiations for the host agreement had been under consideration by the World Health Assembly itself which passed a resolution on the subject on 25 June at its Second

Session. The Director-General was requested to continue the negotiations with the Government of Egypt in order to obtain an agreement extending privileges and immunities to the Regional Organization and to report to the next session. Pending the coming into force of that agreement, the Assembly invited the Government of Egypt to extend to the Organization the privileges and immunities set out in the Convention on the Privileges and Immunities of the Specialized Agencies. Egypt, however, had not yet adhered to that Convention, and it was only the Council of Ministers' decision authorizing, temporarily, exemption from customs dues that applied when the Regional Office commenced operations, as it did on the agreed date, 1 July 1949.

24. The Director-General continued the negotiations and on 26 July 1949 the WHO's comments on the Contentieux' memorandum were transmitted to the Egyptian Government, together with a revised draft of the host agreement and a draft lease of the site and buildings. On 9 November 1949, a host agreement on the same lines as the draft transmitted to Egypt was signed with the Government of India. In February 1950 the Executive Board noted the state of the negotiations ; a letter of 23 March 1950 to the WHO Regional Director from the Contentieux of the Egyptian Government Ministries gave the impression that, subject to minor modifications, WHO's draft was acceptable to Egypt. In that belief the Third World Health Assembly passed a resolution in the following May affirming the Agreement in the form of the WHO's revised draft. Subsequently, however, the Regional Office reported that the Egyptian authorities were, in fact, asking for a number of fairly substantial alterations. As the Director-General considered the amendments requested to touch fundamental points of principle and therefore to be unacceptable, he went himself to Egypt and, in negotiations with the Egyptian authorities on 19 and 20 December 1950, persuaded them to drop the amendments which were the cause of the disagreement. The Egyptian authorities then expressed themselves as ready to accept the host agreement, subject to the approval of the Egyptian Parliament and to certain points being set out in an accompanying Exchange of Notes. Eventually, the Agreement was signed in Cairo on 25 March 1951 and was approved by the Fourth World Health Assembly in May, although one of the points in the Exchange of Notes had given rise to some discussion in the Legal Sub-Committee. The Egyptian Parliament gave its approval towards the end of June and the long-negotiated host agreement finally entered into force on 8 August 1951. As to the lease of the site and buildings of the former Sanitary Bureau to the WHO, which under an Egyptian law also required Parliamentary approval, its execution was not completed until 1955, the operation of the lease then being expressed to have begun several years earlier on 1 July 1949.

25. Mention has finally to be made of an Agreement for the provision of services by the WHO in Egypt, signed on 25 August 1950. At the same time the Court notes that, according to the Director of the Legal Division of the

Organization, this Agreement does not have any particular connection with the setting up of the Regional Office in Egypt. The 1950 Agreement, he explained, is simply a standard form of agreement for the execution of technical co-operation projects, similar to Agreements concluded with other member States which have no WHO office situated on their territories.

26. The position appearing from the events which the Court has so far set out may be summarized as follows. During the early years of the WHO, Egypt raised the question of the relation to the new Organization of the existing long-established Alexandria Sanitary Bureau, and the Interim Commission of the WHO in turn approached Egypt regarding the integration of the existing Bureau with the Organization and the location of the WHO's Regional Office for the Eastern Mediterranean in Alexandria. Agreement was then reached between the WHO and Egypt early in 1949 that the operation of the Alexandria Bureau should be taken over by the WHO in July of that year. That agreement was arrived at on the basis of offers by the Egyptian Government to lease to the Organization for the use of the Regional Office for the Eastern Mediterranean the site and buildings of the existing Alexandria Bureau, and to transfer to the Organization the functions and all related files and records of the Bureau. Egypt's offers were accepted by the Organization which, on its part, undertook to assume financial responsibility for the Bureau on the date of the opening of the Regional Office ; and it was then decided that the date should be 1 July 1949. These arrangements were approved by the Egyptian Government and were endorsed by the Organization specifically as an integration of a pre-existing institution under Article 54 of its Constitution. Temporary exemption from customs dues having been provided by Egypt's Council of Ministers, the WHO's Regional Office commenced operating at the seat of the former Sanitary Bureau on 1 July 1949.

27. Meanwhile, negotiations for the conclusion of a host agreement for the Regional Office, begun at least five months earlier, had been making slow progress and were not completed until nearly two years later. On 25 March 1951, however, the Agreement, Section 37 of which is the subject of the present request, was signed and ultimately entered into force on 8 August of that year. That agreement, in the words of its preamble, was concluded :

“for the purpose of determining the privileges, immunities and facilities to be granted by the Government of Egypt to the World Health Organization, to the representatives of its Members and to its experts and officials in particular with regard to its arrangements in the Eastern Mediterranean Region, and of regulating other related matters”.

Its provisions followed closely those of the model host agreement prepared in the WHO, and are for the most part typical of those found in host agreements of headquarters or regional or local offices of international

organizations. These provisions are on the lines of the Convention of 21 November 1947 on the Privileges and Immunities of the Specialized Agencies, to which Egypt became a party on 28 September 1954. Under Section 39 of that Convention, however, the Agreement of 25 March 1951 continued to be the instrument defining the legal status of the Regional Office in Alexandria as between the WHO and Egypt.

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28. The Court must now turn to the circumstances which have led to the submission of the present request to the Court. Ever since beginning its activities in Egypt on 1 July 1949, the WHO's Regional Office has operated continuously at the site of the former Sanitary Bureau in Alexandria. In doing so, however, it has encountered certain difficulties stemming from the tense political situation in the Middle East. Those difficulties are reflected in the fact that in 1954 the World Health Assembly found it necessary to divide the Committee into two sub-committees : Sub-Committee A in which Israel was not, and Sub-Committee B in which it was, represented.

29. On 7 May 1979 the Regional Director received a letter from the governments of five member States of the Region requesting the convening of an extraordinary meeting of the Regional Committee to discuss transferring the Regional Office from Alexandria to one of the other Arab member States. A special session of Sub-Committee A was held on 12 May 1979, attended by representatives of 20 States, but not by Egypt which had asked for the session to be postponed. Sub-Committee A adopted a resolution reciting the wish of the majority of its members that the Regional Office should be transferred to another State in the Region and recommending its transfer. Meanwhile, the question had also been placed on the agenda for the thirty-second Session of the World Health Assembly ; and on 16 May 1979 the Egyptian delegation submitted a Memorandum alleging certain procedural irregularities and objecting that the request for transfer was "politically motivated". The question was referred to a Committee which expressed the view that the effects of the implementation of such a decision by the Assembly needed study and recommended that the study be undertaken by the Executive Board.

30. The World Health Assembly adopted the recommendation of the Committee and, on 28 May 1979, the Executive Board set up a Working Group to study all aspects of the matter and report back in January 1980. The Working Group's report, dated 16 January 1980 (which is in the dossier of documents supplied to the Court), included a section entitled "Question of denunciation of the existing Host Agreement", as to which it said :

"The Group considered that it was not in a position to decide whether or not Section 37 of the Agreement with Egypt is applicable. The final position of the Organization on the possible discrepancies of

views will have to be decided upon by the Health Assembly . . . the International Court of Justice could also possibly be requested to provide an advisory opinion under Article 76 of the WHO Constitution.”

The Executive Board accordingly transmitted the Working Group’s report to the World Health Assembly for consideration and decision.

31. A further special session of Sub-Committee A of the Regional Committee for the Eastern Mediterranean was held in Geneva on 9 May 1980, attended by representatives of 20 States, including Egypt. A resolution was adopted, by 19 votes to 1 (that of Egypt) whereby the Sub-Committee decided to recommend the transfer of the Regional Office for the Eastern Mediterranean to Amman, Jordan, as soon as possible. The representative of Egypt objected that the recommendation was, in his view, based on purely political considerations. The question was again referred to the World Health Assembly at its thirty-third session, and at Egypt’s request the text of the 1951 Host Agreement was distributed to member States. At its meeting on 16 May 1980, the Committee concerned had before it a draft resolution submitted by 20 Arab States under which the Health Assembly would decide to transfer the Regional Office to Amman, Jordan, as soon as possible. Before it also was a draft resolution submitted by the United States under which the Assembly would decide, “prior to taking any decision on removal of the Regional Office” to request an advisory opinion of the Court in the terms in which the request has been submitted to the Court. In the course of the debate the Arab States stressed the wish of the great majority of the member States of the Region to transfer the office from Egypt and the harm which they considered its retention in Alexandria would do to the work of the Organization. A number of other States, on the other hand, questioned the desirability of transferring a regional health office for political reasons and expressed doubts regarding the practical aspects of the transfer. The Egyptian delegate, *inter alia*, invoked Section 37, pointing out problems involved in its interpretation. The United States resolution was endorsed by the Committee which recommended its adoption to the World Health Assembly. Three days later, on 19 May, the representatives of 17 Arab States addressed a letter to the Director-General of the Organization informing him of their decision completely to “boycott” the Regional Office in its present location, not to have any dealings with it as from that date, and to deal directly with Headquarters in Geneva.

32. When the Committee’s recommendation was considered by the World Health Assembly at a Plenary Meeting on 20 May, the delegate of Jordan disputed the relevance of Section 37 to the question of the transfer of the Regional Office from Egypt, and called for an opinion to be given by the Director of the Legal Division of the Organization. The latter then gave certain explanations as to the problems which he considered to be involved in the interpretation of Section 37 and added that he was not for the moment able to enlighten it further. The Assembly thereupon adopted the

draft resolution recommended by the Committee, the full text of which has been given in the opening paragraph of this Opinion. The resolution, the Court observes, in setting out the Assembly's decision to submit the present request to the Court, explained in recitals the reasons why the Assembly found it necessary to do so. In those recitals the Assembly took note of "the differing views" which had been expressed on the question of whether the Organization "may transfer the Regional Office without regard to the provisions of Section 37 of the Agreement between the World Health Organization and Egypt of 25 March 1951" ; and it further noted that the Working Group of the Executive Board had been "unable to make a judgment or a recommendation on the applicability of Section 37 of this Agreement".

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33. In the debates in the World Health Assembly just referred to, on the proposal to request the present opinion from the Court, opponents of the proposal insisted that it was nothing but a political manoeuvre designed to postpone any decision concerning removal of the Regional Office from Egypt, and the question therefore arises whether the Court ought to decline to reply to the present request by reason of its allegedly political character. In none of the written and oral statements submitted to the Court, on the other hand, has this contention been advanced and such a contention would in any case, have run counter to the settled jurisprudence of the Court. That jurisprudence establishes that if, as in the present case, a question submitted in a request is one that otherwise falls within the normal exercise of its judicial process, the Court has not to deal with the motives which may have inspired the request (*Conditions of Admission of a State to Membership in the United Nations (Article 4 of Charter)*, Advisory Opinion, 1948, I.C.J. Reports 1947-1948, pp. 61-62 ; *Competence of the General Assembly for the Admission of a State to the United Nations*, Advisory Opinion, I.C.J. Reports 1950, pp. 6-7 ; *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)*, Advisory Opinion, I.C.J. Reports 1962, p. 155). Indeed, in situations in which political considerations are prominent it may be particularly necessary for an international organization to obtain an advisory opinion from the Court as to the legal principles applicable with respect to the matter under debate, especially when these may include the interpretation of its constitution.

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34. Having thus examined the factual and legal context in which the present request for an advisory opinion comes before it, the Court will now consider the full meaning and implications of the hypothetical questions on which it is asked to advise. Since those are formulated in the request by reference to the applicability of Section 37 of the Agreement of 25 March 1951 to a transfer of the Regional Office from Egypt, it is necessary at once

to turn to the provisions of that Section. Included in the 1951 Agreement as one of its "Final Provisions", Section 37 reads :

"Section 37. The present Agreement may be revised at the request of either party. In this event the two parties shall consult each other concerning the modifications to be made in its provisions. If the negotiations do not result in an understanding within one year, the present Agreement may be denounced by either party giving two years' notice."

The "differing views" in the World Health Assembly as to the applicability of these provisions to a transfer of the Regional Office from Egypt, which are mentioned in the recitals to the resolution, concerned various points. One of these was whether a transfer of the seat of the Regional Office from Egypt is or is not covered by the provisions of the 1951 Agreement which to a large extent deal with privileges, immunities and facilities. Another was whether the provisions of Section 37 relate only to the case of a request by one or other party for revision of provisions of the Agreement relating to the question of privileges, immunities and facilities or are also apt to cover its total revision or outright denunciation. But the differences of view also involved further points, as appears from the debates and from the explanations given by the Director of the Legal Division of the WHO at the World Health Assembly's meeting of 20 May. Dealing with a question from the delegate of Jordan about the two years' notice provided for in Section 37, the Director of the Legal Division referred to the enlightenment to be obtained on the point by comparing the provisions in other host agreements. He also drew attention to the possibility of referring to the applicable general principles of international law, emphasizing the relevance in this connection of Article 56 of the International Law Commission's draft articles on treaties concluded between States and international organizations or between international organizations.

35. Accordingly, it is apparent that, although the questions in the request are formulated in terms only of Section 37, the true legal question under consideration in the World Health Assembly is : What are the legal principles and rules applicable to the question under what conditions and in accordance with what modalities a transfer of the Regional Office from Egypt may be effected ? This, in the Court's opinion, must also be considered to be the legal question submitted to it by the request. The Court points out that, if it is to remain faithful to the requirements of its judicial character in the exercise of its advisory jurisdiction, it must ascertain what are the legal questions really in issue in questions formulated in a request (cf. *Admissibility of Hearings of Petitioners by the Committee on South West Africa, Advisory Opinion, I.C.J. Reports 1956*, p. 26, and see also p. 37 ; *Certain Expenses of the United Nations (Article 17, paragraph 2, of the*

*Charter*), *Advisory Opinion, I.C.J. Reports 1962*, pp. 156-158). It also points out in this connection that the Permanent Court of International Justice, in replying to requests for an advisory opinion, likewise found it necessary in some cases first to ascertain what were the legal questions really in issue in the questions posed in the request (cf. *Jaworzina, Advisory Opinion, 1923, P.C.I.J., Series B, No. 8*, p. 282 ; *Interpretation of the Greco-Turkish Agreement of 1 December 1926, Advisory Opinion, 1928, P.C.I.J., Series B, No. 16*, pp. 5-16). Furthermore, as the Court has stressed earlier in this Opinion, a reply to questions of the kind posed in the present request may, if incomplete, be not only ineffectual but actually misleading as to the legal rules applicable to the matter under consideration by the requesting Organization. For this reason, the Court could not adequately discharge the obligation incumbent upon it in the present case if, in replying to the request, it did not take into consideration all the pertinent legal issues involved in the matter to which the questions are addressed.

36. The Court will therefore now proceed to consider its replies to the questions formulated in the request on the basis that the true legal question submitted to the Court is : What are the legal principles and rules applicable to the question under what conditions and in accordance with what modalities a transfer of the Regional Office from Egypt may be effected ?

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37. The Court thinks it necessary to underline at the outset that the question before it is not whether, in general, an organization has the right to select the location of the seat of its headquarters or of a regional office. On that question there has been no difference of view in the present case, and there can be no doubt that an international organization does have such a right. The question before the Court is the different one of whether, in the present case, the Organization's power to exercise that right is or is not regulated by reason of the existence of obligations vis-à-vis Egypt. The Court notes that in the World Health Assembly and in some of the written and oral statements before the Court there seems to have been a disposition to regard international organizations as possessing some form of absolute power to determine and, if need be, change the location of the sites of their headquarters and regional offices. But States for their part possess a sovereign power of decision with respect to their acceptance of the headquarters or a regional office of an organization within their territories ; and an organization's power of decision is no more absolute in this respect than is that of a State. As was pointed out by the Court in one of its early Advisory Opinions, there is nothing in the character of international organizations to justify their being considered as some form of "super-State" (*Reparations for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949*, p. 179). International organizations are subjects of international law and, as such, are bound by

any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties. Accordingly, it provides no answer to the questions submitted to the Court simply to refer to the right of an international organization to determine the location of the seat of its regional offices.

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38. The “differing views” expressed in the World Health Assembly regarding the relevance of the Agreement of 25 March 1951, and regarding the question whether the terms of Section 37 of the Agreement are applicable in the event of any transfer of the Regional Office from Egypt, were repeated and further developed in the written and oral statements submitted to the Court. As to the relevance of the 1951 Agreement in the present connection, the view advanced on one side has been that the establishment of the Regional Office in Alexandria took place on 1 July 1949, pursuant to an agreement resulting either from Egypt’s offer to transfer the operation of the Alexandria Bureau to the WHO and the latter’s acceptance of that offer, or from Egypt’s acceptance of a unilateral act of the competent organs of the WHO determining the site of the Regional Office. Proponents of this view maintain that the 1951 Agreement was a separate transaction concluded after the establishment of the Regional Office in Egypt had been completed and the terms of which only provide for the immunities, privileges and facilities of the Regional Office. They point to the fact that some other host agreements of a similar kind contain provisions expressly for the establishment of the seat of the Regional Office and stress the absence of such a provision in the 1951 Agreement. This Agreement, they argue, although it may contain references to the seat of the Regional Office in Alexandria, does not provide for its location there. On this basis, and on the basis of their understanding of the object of the 1951 Agreement deduced from its title, preamble, and text, they maintain that the Agreement has no bearing on the Organization’s right to remove the Regional Office from Egypt. They also contend that the 1951 Agreement was not limited to the privileges, immunities and facilities granted only to the Regional Office, but had a more general purpose, namely, to regulate the above-mentioned questions between Egypt and the WHO in general.

39. Proponents of the opposing view say that the establishment of the Regional Office and the integration of the Alexandria Bureau with the WHO were not completed in 1949 ; they were accomplished by a series of acts in a composite process, the final and definitive step in which was the conclusion of the 1951 host agreement. To holders of this view, the act of transferring the operation of the Alexandria Bureau to the WHO in 1949 and the host agreement of 1951 are closely related parts of a single transaction whereby it was agreed to establish the Regional Office at Alexandria. Stressing the several references in the 1951 Agreement to the location of the Office in Alexandria, they argue that the absence of a specific provision regarding its establishment there is due to the fact that this

Agreement was dealing with a pre-existing Sanitary Bureau already established in Alexandria. In general, they emphasize the significance of the character of the 1951 Agreement as a headquarters agreement, and of the constant references to it as such in the records of the WHO and in official acts of the Egyptian State.

40. The differences regarding the application of Section 37 of the Agreement to a transfer of the Regional Office from Egypt have turned on the meaning of the word "revise" in the first sentence and on the interpretation then to be given to the two following sentences of the Section. According to one view the word "revise" can cover only modifications of particular provisions of the Agreement and cannot cover a termination or denunciation of the Agreement, such as would be involved in the removal of the seat of the Office from Egypt ; and this is the meaning given to the word "revise" in law dictionaries. On that assumption, and on the basis of what they consider to be the general character of the 1951 Agreement, they consider all the provisions of the Section, including the right of denunciation in the third sentence, to apply only in cases where a request has been made by one or other party for a partial modification of the terms of the Agreement. They conclude that, in consequence, the 1951 Agreement contains no general right of denunciation and invoke the general rules expressed in the first paragraph of Article 56 of the Vienna Convention on the Law of Treaties and the corresponding provision of the International Law Commission's draft articles on treaties concluded between States and international organizations or between international organizations. Under those articles a treaty, "which contains no provision regarding its termination and which does not provide for denunciation or withdrawal" is not subject to denunciation or withdrawal unless, *inter alia*, such a right may be implied by the nature of the treaty. Referring to opinions expressed in the International Law Commission that headquarters agreements of international organizations are by their nature agreements in which a right of denunciation may be implied under the articles in question, they then maintain that such a general right of denunciation is to be implied in the 1951 Agreement. The proponents of this view go on to argue that in any case the transfer of the Regional Office from Egypt is not a matter which can be said to fall within the provisions of Section 37, and that the removal of the seat of the Office from Egypt would not necessarily mean the denunciation of the 1951 Agreement.

41. Opponents of the view just described insist, however, that the word "revise" may also have the wider meaning of "review" and cover a general or total revision of an agreement, including its termination. According to them, the word has not infrequently been used with that meaning in treaties and was so used in the 1951 Agreement. They maintain that this is confirmed by the *travaux préparatoires* of Section 37, which are to be found in negotiations between representatives of the Swiss Government and the ILO concerning the latter's headquarters agreement with Switzerland. These negotiations, they consider, concern the specific question of the

establishment of the ILO's seat in Geneva and, while Switzerland wished in this connection to include a provision for denunciation in the agreement, the ILO did not. The result, they say, was the compromise formula, subsequently introduced into WHO host agreements, which provides for the possibility of denunciation, but only after consultation and negotiation regarding the revision of the instrument. In their view, therefore, the *travaux préparatoires* confirm that the formula in Section 37 was designed to cover revision of the location of the Regional Office's seat at Alexandria, including the possibility of its transfer outside Egypt. They further argue that this interpretation is one required by the object and purpose of Section 37 which, they say, was clearly meant to preclude either of the parties to the Agreement from suddenly and precipitately terminating the legal régime it created. The proponents of this view of Section 37 also take the position that, even if it were to be rejected and the Agreement interpreted as also including a general right of denunciation, Egypt would still be entitled to notice under the general rules of international law. In this connection, they point to Article 56 of the Vienna Convention on the Law of Treaties and the corresponding article in the International Law Commission's draft articles on treaties concluded between States and international organizations or between international organizations. In both articles paragraph 2 specifically provides that in any case where a right of denunciation or withdrawal is implied in a treaty a party shall give not less than twelve months' notice of its intention to exercise the right.

42. The Court has described the differences of view regarding the application of Section 37 to a transfer of the Regional Office from Egypt only in a broad outline which does not reproduce all the refinements with which they have been expressed nor all the considerations by which they have been supported. If it has done this, it is because it considers that the emphasis placed on Section 37 in the questions posed in the request distorts in some measure the general legal framework in which the true legal issues before the Court have to be resolved. Whatever view may be held on the question whether the establishment and location of the Regional Office in Alexandria are embraced within the provisions of the 1951 Agreement, and whatever view may be held on the question whether the provisions of Section 37 are applicable to the case of a transfer of the Office from Egypt, the fact remains that certain legal principles and rules are applicable in the case of such a transfer. These legal principles and rules the Court must, therefore, now examine.

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43. By the mutual understandings reached between Egypt and the Organization from 1949 to 1951 with respect to the Regional Office of the Organization in Egypt, whether they are regarded as distinct agreements or as separate parts of one transaction, a contractual legal régime was created

between Egypt and the Organization which remains the basis of their legal relations today. Moreover, Egypt was a member – a founder member – of the newly created World Health Organization when, in 1949, it transferred the operation of the Alexandria Sanitary Bureau to the Organization ; and it has continued to be a member of the Organization ever since. The very fact of Egypt's membership of the Organization entails certain mutual obligations of co-operation and good faith incumbent upon Egypt and upon the Organization. Egypt offered to become host to the Regional Office in Alexandria and the Organization accepted that offer ; Egypt agreed to provide the privileges, immunities and facilities necessary for the independence and effectiveness of the Office. As a result the legal relationship between Egypt and the Organization became, and now is, that of a host State and an international organization, the very essence of which is a body of mutual obligations of co-operation and good faith. In the present instance Egypt became host to the Organization's Regional Office, with its attendant advantages, and the Organization acquired a valuable seat for its office by the handing over to the Organization of an existing Egyptian Sanitary Bureau established in Alexandria, and the element of mutuality in the legal régime thus created between Egypt and the WHO is underlined by the fact that this was effected through common action based on mutual consent. This special legal régime of mutual rights and obligations has been in force between Egypt and WHO for over thirty years. The result is that there now exists in Alexandria a substantial WHO institution employing a large staff and discharging health functions important both to the Organization and to Egypt itself. In consequence, any transfer of the WHO Regional Office from the territory of Egypt necessarily raises practical problems of some importance. These problems are, of course, the concern of the Organization and of Egypt rather than of the Court. But they also concern the Court to the extent that they may have a bearing on the legal conditions under which a transfer of the Regional Office from Egypt may be effected.

44. The problems were studied by the Working Group set up by the Executive Board of WHO in 1979, and it is evident from the report of that Working Group that much care and co-operation between the Organization and Egypt is needed if the risk of serious disruption to the health work of the Regional Office is to be avoided. It is also apparent that a reasonable period of time would be required to effect an orderly transfer of the operation of the Office from Alexandria to the new site without disruption to the work. Precisely what period of time would be required is a matter which can only be finally determined by consultation and negotiation between WHO and Egypt. It is, moreover, evident that during this period the Organization itself would need to make full use of the privileges, immunities and facilities provided in the Agreement of 25 March 1951 in order to ensure a smooth and orderly transfer of the Office from Egypt to its new site. In short, the situation arising in the event of a transfer of the

Regional Office from Egypt is one which, by its very nature, demands consultation, negotiation and co-operation between the Organization and Egypt.

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45. The Court's attention has been drawn to a considerable number of host agreements of different kinds, concluded by States with various international organizations and containing varying provisions regarding the revision, termination or denunciation of the agreements. These agreements fall into two main groups : (1) those providing the necessary régime for the seat of a headquarters or regional office of a more or less permanent character, and (2) those providing a régime for other offices set up *ad hoc* and not envisaged as of a permanent character. As to the first group, which includes agreements concluded by the ILO and the WHO, their provisions take different forms. The headquarters agreement of the United Nations itself, with the United States, which leaves to the former, the right to decide on its removal, provides for its termination if the seat is removed from the United States "except for such provisions as may be applicable in connection with the orderly termination of the operations of the United Nations at its seat in the United States and the disposition of its property therein". Other agreements similarly provide for cessation of the host agreement upon the removal of the seat, subject to arrangements for the orderly termination of the operations, while others, for example, provide for one year's or six months' notice of termination or denunciation, and there are other variants. The *ad hoc* type of agreement, on the other hand, commonly provides for termination on short periods of notice or by agreement or simply on cessation of the operations subject to orderly arrangements for bringing them to an end.

46. In considering these provisions, the Court feels bound to observe that in future closer attention might with advantage be given to their drafting. Nevertheless, despite their variety and imperfections, the provisions of host agreements regarding their revision, termination or denunciation are not without significance in the present connection. In the first place, they confirm the recognition by international organizations and host States of the existence of mutual obligations incumbent upon them to resolve the problems attendant upon a revision, termination or denunciation of a host agreement. But they do more, since they must be presumed to reflect the views of organizations and host States as to the implications of those obligations in the contexts in which the provisions are intended to apply. In the view of the Court, therefore, they provide certain general indications of what the mutual obligations of organizations and host States to co-operate in good faith may involve in situations such as the one with which the Court is here concerned.

47. A further general indication as to what those obligations may entail is to be found in the second paragraph of Article 56 of the Vienna Con-

vention on the Law of Treaties and the corresponding provision in the International Law Commission's draft articles on treaties between States and international organizations or between international organizations. Those provisions, as has been mentioned earlier, specifically provide that, when a right of denunciation is implied in a treaty by reason of its nature, the exercise of that right is conditional upon notice, and that of not less than twelve months. Clearly, these provisions also are based on an obligation to act in good faith and have reasonable regard to the interests of the other party to the treaty.

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48. In the present case, as the Court has pointed out, the true legal question submitted to it in the request is : What are the legal principles and rules applicable to the question under what conditions and in accordance with what modalities a transfer of the Regional Office from Egypt may be effected ? Moreover, as it has also pointed out, differing views have been expressed concerning both the relevance in this connection of the 1951 Agreement and the interpretation of Section 37 of that Agreement. Accordingly, in formulating its reply to the request, the Court takes as its starting point the mutual obligations incumbent upon Egypt and the Organization to co-operate in good faith with respect to the implications and effects of the transfer of the Regional Office from Egypt. The Court does so the more readily as it considers those obligations to be the very basis of the legal relations between the Organization and Egypt under general international law, under the Constitution of the Organization and under the agreements in force between Egypt and the Organization. The essential task of the Court in replying to the request is, therefore, to determine the specific legal implications of the mutual obligations incumbent upon Egypt and the Organization in the event of either of them wishing to have the Regional Office transferred from Egypt.

49. The Court considers that in the context of the present case the mutual obligations of the Organization and the host State to co-operate under the applicable legal principles and rules are as follows :

- In the first place, those obligations place a duty both upon the Organization and upon Egypt to consult together in good faith as to the question under what conditions and in accordance with what modalities a transfer of the Regional Office from Egypt may be effected.
- Secondly, in the event of its being finally decided that the Regional Office shall be transferred from Egypt, their mutual obligations of co-operation place a duty upon the Organization and Egypt to consult together and to negotiate regarding the various arrangements needed to effect the transfer from the existing to the new site in an orderly manner and with a minimum of prejudice to the work of the Organization and the interests of Egypt.
- Thirdly, those mutual obligations place a duty upon the party which

wishes to effect the transfer to give a reasonable period of notice to the other party for the termination of the existing situation regarding the Regional Office at Alexandria, taking due account of all the practical arrangements needed to effect an orderly and equitable transfer of the Office to its new site.

Those, in the view of the Court, are the implications of the general legal principles and rules applicable in the event of the transfer of the seat of a Regional Office from the territory of a host State. Precisely what periods of time may be involved in the observance of the duties to consult and negotiate, and what period of notice of termination should be given, are matters which necessarily vary according to the requirements of the particular case. In principle, therefore, it is for the parties in each case to determine the length of those periods by consultation and negotiation in good faith. Some indications as to the possible periods involved, as the Court has said, can be seen in provisions of host agreements, including Section 37 of the Agreement of 25 March 1951, as well as in Article 56 of the Vienna Convention on the Law of Treaties and in the corresponding article of the International Law Commission's draft articles on treaties between States and international organizations or between international organizations. But what is reasonable and equitable in any given case must depend on its particular circumstances. Moreover, the paramount consideration both for the Organization and the host State in every case must be their clear obligation to co-operate in good faith to promote the objectives and purposes of the Organization as expressed in its Constitution ; and this too means that they must in consultation determine a reasonable period of time to enable them to achieve an orderly transfer of the Office from the territory of the host State.

50. It follows that the Court's reply to the second question is that the legal responsibilities of the Organization and Egypt during the transitional period between the notification of the proposed transfer of the Office and the accomplishment thereof would be to fulfil in good faith the mutual obligations which the Court has set out in answering the first question.

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51. For these reasons,

THE COURT,

1. By twelve votes to one,

*Decides* to comply with the request for an advisory opinion ;

IN FAVOUR : *President* Sir Humphrey Waldock ; *Vice-President* Elias ; *Judges* Forster, Gros, Lachs, Nagendra Singh, Ruda, Mosler, Oda, Ago, El-Erian and Sette-Camara ;

AGAINST : *Judge* Morozov ;

## 2. With regard to Question 1,

By twelve votes to one,

*Is of the opinion* that in the event specified in the request, the legal principles and rules, and the mutual obligations which they imply, regarding consultation, negotiation and notice, applicable as between the World Health Organization and Egypt are those which have been set out in paragraph 49 of this Advisory Opinion and in particular that :

- (a) their mutual obligations under those legal principles and rules place a duty both upon the Organization and upon Egypt to consult together in good faith as to the question under what conditions and in accordance with what modalities a transfer of the Regional Office from Egypt may be effected ;
- (b) in the event of its being finally decided that the Regional Office shall be transferred from Egypt, their mutual obligations of co-operation place a duty upon the Organization and Egypt to consult together and to negotiate regarding the various arrangements needed to effect the transfer from the existing to the new site in an orderly manner and with a minimum of prejudice to the work of the Organization and the interests of Egypt ;
- (c) their mutual obligations under those legal principles and rules place a duty upon the party which wishes to effect the transfer to give a reasonable period of notice to the other party for the termination of the existing situation regarding the Regional Office at Alexandria, taking due account of all the practical arrangements needed to effect an orderly and equitable transfer of the Office to its new site ;

IN FAVOUR : *President* Sir Humphrey Waldock ; *Vice-President* Elias ; *Judges* Forster, Gros, Lachs, Nagendra Singh, Ruda, Mosler, Oda, Ago, El-Erian and Sette-Camara ;

AGAINST : *Judge* Morozov ;

## 3. With regard to Question 2.

By eleven votes to two,

*Is of the opinion* that, in the event of a decision that the Regional Office shall be transferred from Egypt, the legal responsibilities of the World Health Organization and Egypt during the transitional period between the notification of the proposed transfer of the Office and the accomplishment thereof are to fulfil in good faith the mutual obligations which the Court has set out in answering Question 1 ;

IN FAVOUR : *President* Sir Humphrey Waldock ; *Vice-President* Elias ; *Judges* Forster, Gros, Nagendra Singh, Ruda, Mosler, Oda, Ago, El-Erian and Sette-Camara ;

AGAINST : *Judges* Lachs and Morozov.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twentieth day of December, one thousand nine hundred and eighty, in three copies, of which one will be placed in the archives of the Court, and the others transmitted to the Secretary-General of the United Nations and to the Director-General of the World Health Organization, respectively.

*(Signed)* Humphrey WALDOCK,  
President.

*(Signed)* Santiago TORRES BERNÁRDEZ,  
Registrar.

Judges GROS, LACHS, RUDA, MOSLER, ODA, AGO, EL-ERIAN, and SETTE-CAMARA append separate opinions to the Opinion of the Court.

Judge MOROZOV appends a dissenting opinion to the Opinion of the Court.

*(Initialed)* H.W.

*(Initialed)* S.T.B.

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